

Agenda

Item #6



COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
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Guidance on Reporting under 21-A M.R.S.A. § 1056-B

What is the § 1056-B reporting requirement?

Most organizations that raise or spend money to influence a statewide ballot question in Maine form a political action committee (PAC) for that purpose, and file regular PAC reports with the Commission. Some advocacy, charitable, or other organizations do not qualify as PACs under the Election Law, but they are interested in raising and spending money to influence ballot questions. In 2000, the Maine Legislature enacted 21-A M.R.S.A. § 1056-B to create a reporting requirement for these non-PAC organizations. Under this section,

[a]ny person not defined as a political committee who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$1,500 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question must file a report with the Commission.

The complete language of 21-A M.R.S.A. § 1056-B is attached to this memo.

Does the requirement apply only to individuals?

No. Under Maine Election law, the term "person" includes individuals, committees, firms, partnerships, corporations, associations, groups or organizations.

What contributions are covered by § 1056-B? [STAFF ADVICE, 12/20/06]

Section 1056-B covers "contributions ... made for the purpose of initiating, promoting, defeating, or influencing in any way a ballot question" The Commission interprets this to include:

- funds which the contributor specified were given for the purpose of promoting or opposing a ballot question;
- funds provided in response to a solicitation which would lead the contributor to believe that the funds would be used specifically for the purpose of promoting or opposing a ballot question; and
- funds which can reasonably be determined to have been provided by the contributor for the purpose of promoting or opposing a ballot question when

Second Draft

viewed in the context of the contribution and the recipient's activities regarding a ballot question.

Funds provided in response to a solicitation which would lead the contributor to believe that the funds would be used to support an organization's general activities, rather than activities relating to a ballot question, are not covered by § 1056-B.

What expenditures are covered by §1056-B? [STAFF ADVICE, 12/20/06]

Section 1056-B covers "expenditures made for the purpose of initiating, promoting, defeating, or influencing in any way a ballot question" The Commission interprets this to include:

- expenditures for communications to voters for the purpose of promoting or opposing a ballot question, including advertising on television, radio, and print media; literature that is mailed or distributed by hand to voters; automated telephone calls and scripted calls from live callers; signs, bumper stickers, and other forms of outdoor advertising;
- staff time promoting or opposing the ballot question at public or press events;
- staff time canvassing (conducting door-to-door visits to) voters;
- travel expenses paid to employees or volunteers who are conducting activities to promote or oppose a ballot question;
- staff time preparing presentations, testimony, letters to the editor, opinion pieces, articles for publication, or press releases to promote or oppose a ballot question;
- research or technical analysis including the writing of reports, where the organization knows or reasonably should know that the research will be used to promote or oppose a ballot question; and
- expenditures to distribute research or technical analysis regarding a ballot question for the purpose of encouraging voters to vote yes, or no, on the question.

This list is not intended to be exhaustive and is similar to the types of expenditures reported by political action committees to promote or defeat a ballot question.

What expenditures are not covered by § 1056-B? [STAFF ADVICE, 12/20/06]

Expenditures made merely to educate voters or others in a neutral way about a ballot question are not covered by § 1056-B. These would include:

- hosting a meeting at which advocates or members of the public are invited to present their views on the ballot question, provided that the sponsors of the event make reasonable efforts to ensure that the forum is balanced;
- ~~costs of distributing~~ news stories, commentary, or editorials concerning a ballot question ~~distributed~~ through the facilities of a broadcasting station, newspaper, magazine, or other periodical publication, unless the facilities are owned or controlled by persons otherwise engaged in other advocacy activities to promote or oppose the ballot question; and
- research or analysis of a ballot question which is not conducted for the purpose of initiating, promoting, or defeating the ballot question. This could include research that is conducted in a neutral fashion and is intended to be communicated to opinion leaders, in academic settings, or to the public at large. When statewide ballot questions are pending, it is not unusual for individuals with specialized skills (e.g., academics, attorneys, educational institutions, pollsters) to be hired to undertake research or analysis concerning the ballot question. If these activities are neutral and not made for the purpose of promoting or defeating the question, they would not be covered by § 1056-B.

Do “expenditures [made] for the purpose of initiating ... a ballot question” include payments to staff or other expenses incurred in drafting legislation intended as a ballot question?

Yes. If an organization pays its employees (or incurs other expenses) to draft legislation that the organization intends will be submitted to the Secretary of State as a direct initiative (even if submitted by a different organization), those expenses should be counted as expenditures made to initiate a ballot question.

If an organization pays its employees to draft legislation and the organization truly does not know whether the legislation will be submitted as a ballot question, those costs are not covered by 21-A M.R.S.A. § 1056-B. If the organization later submits the legislation as a ballot question or receives contributions or makes expenditures to influence in any way the ballot question, If the legislation is later approved by the Secretary of State for circulation as a petition for a direct initiative, however, the drafting costs should be considered a covered expense at the time the ballot petition is approved.



If an organization's only financial activity with respect to a ballot question is providing monetary contributions to a PAC, does the organization need to file reports under § 1056-B?

No. If an organization's only expenditures in connection with a ballot question are contributions to a PAC, the organization is not required to file a § 1056-B report.

What if an organization donates the time of its paid employees to a PAC to influence a ballot question or makes payments to vendors for goods or services to influence a ballot question in coordination with a PAC?

Donating paid staff to a PAC, or coordinating expenditures with a PAC are in-kind contributions to the PAC. They are exempt from being counted toward the \$1,500 expenditure threshold to file a § 1056-B report; however, the PAC must report them as in-kind contributions.

An organization's expenditures to influence a ballot question may only be considered an in-kind contribution to a PAC if they are coordinated with the PAC or are accepted by a PAC. Expenditures to influence a ballot question made independently of the PAC should not be considered contributions to the PAC.

Guidance to PACs and Contributors on the Reporting of In-Kind Contributions

In 2006, some PACs involved in ballot question campaigns reported receiving significant in-kind contributions from other organizations, but provided little detail regarding the goods and services they received. In future elections, the Commission will request that PACs provide more detail about large in-kind contributions they have received. For example, if a PAC reports that it received significant paid staff time from another organization, it should include a description of those staff activities and the number of hours of staff time that were contributed. A PAC's reporting of coordinated spending made by a contributor should include a brief description of the goods and services that were purchased and their value. Contributed staff and coordinated expenditures should not be lumped together as a single contribution for the reporting period, but should be itemized as separate contributions.

Future Law Changes and Guidance

Please be aware that the Maine Legislature will consider L.D. 1394 in the 2008 session, which could amend the reporting requirements for non-PAC organizations. If legislation amending §1056-B is enacted, the Commission will offer further guidance as necessary.

If you have any questions, please telephone the Commission's PAC/Party/Lobbyist Registrar at 287-4179.

21-A M.R.S.A. § 1056-B. Reports of contributions and expenditures by persons

Any person not defined as a political committee who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$1,500 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question must file a report with the Commission. In the case of a municipal election, a copy of the same information must be filed with the clerk of that municipality.

1. Filing requirements. A report required by this section must be filed with the Commission according to a reporting schedule that the Commission shall establish that takes into consideration existing campaign finance reporting schedule requirements in section 1059.

2. Content. A report must contain an itemized account of each contribution received and expenditure made aggregating in excess of \$100 in any election; the date of each contribution; the date and purpose of each expenditure; and the name of each contributor, payee or creditor. Total contributions or expenditures of less than \$500 in any election need not be itemized. The report must state whether the purpose for receiving contributions and making expenditures is in support of or in opposition to the ballot question.

3. Forms. A report required by this section must be on a form prescribed and prepared by the Commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form.



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
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04333-0135

2nd
Opportunity
to Comment

MEMORANDUM

To: Filers of § 1056 Reports
Other Interested Parties

From: Jonathan Wayne, Executive Director

Date: December 20, 2007

Subject: Second Opportunity to Comment on Ballot Question Reporting

At its meeting on December 7, the Ethics Commission considered proposed guidance on ballot question reporting (under Section 1056-B) drafted by the staff. After issuing an opportunity to comment on November 14, 2007, the staff received one written comment and one informal question. In response, the Commission staff proposed amended advice. The changes are noted in the attached second draft by shading and strike-outs.

One issue that the staff struggled with is the circumstance of an organization that pays personnel or other costs to draft legislation *without* the intention that it would be submitted as a ballot question and – some time later – that legislation is submitted to the Secretary of State as a ballot question (either by the original drafting organization or another organization that may or may not be coordinating with the drafting organization). In that circumstance, should the original costs of drafting the legislation be considered an expenditure made “for the purpose of initiating, promoting, defeating or influencing in any way a ballot question” that must be reported under 21-A M.R.S.A. § 1056-B? (underlining added)

Please feel free to comment on any part of the proposed guidance, including the changes made in early December. The Commission will consider the proposed guidance at its meeting on Friday, January 25, at 9:00 a.m., and you are invited to comment at the meeting. Written and e-mailed comments are also welcome. (My e-mail address is Jonathan.Wayne@maine.gov.) Your written comments will be most helpful if the Commission receives them no later than Monday, January 14, so that the staff can consider them and the Commission members can read them in advance of the meeting.

If you have any questions, please telephone me at 287-4179. Thank you for your consideration of the proposed amendments.

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Wayne, Jonathan

From: Carl Lindemann [carl@TrueDialog.org]
Sent: Friday, January 11, 2008 11:45 AM
To: Wayne, Jonathan
Cc: Lavin, Paul; Gardiner, Phyllis
Subject: Re: Second Opportunity to Comment on Section 1056-B Reporting

Attachments: Lindemann - TrueDialog Comments on 1056-B 1_11_08.pdf



Lindemann -
ueDialog Comment.

Dear Jonathan,

See attached. Unfortunately, I've just discovered that I will be unable to attend the Commission session on the 25th. However, I do plan to attend the next session shortly after on the 11th.

Regarding my comments on proposed rule changes sent previously, it would be helpful if consideration of those could be postponed till the February session.

Thank you.

Carl Lindemann
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For a more Authentic Democracy

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To: Members of the Ethics Commission
From: Carl Lindemann, TrueDialog.org
Date: January 11, 2008
RE: Second Opportunity to Comment on Ballot Question Reporting

As I mentioned in my comments in person at the Commission, I had put this issue at a lower priority for the fact that Jonathan Wayne had already put in motion proposals to the legislature that will gut 1056-B reporting. I commend the staff's interest in seeking to improve 1056-B reporting, but I don't see how this will have much practical value either way given the Executive Director's other efforts. I do wonder why there is no mention of how Ethics Commissions in other states handle these matters.

In any case, the scenario here may be interesting but it bears little resemblance to the actual events that apparently raised the issue. Mr Wayne states:

One issue that the staff struggled with is the circumstance of an organization that pays personnel or other costs to draft legislation *without* the intention that it would be submitted as a ballot question and – some time later – that legislation is submitted to the Secretary of State as a ballot question

This is what Maine Heritage Policy Center (MHPC) testified happened in its efforts to pass the Taxpayer Bill of Rights ballot initiative that was defeated in 2006. They claimed they had submitted only model legislation as some kind of academic exercise. Then, they say, outsiders built on this to carry it forward. However, a review of news reports and MHPC's Bill Becker's own published writings reveals otherwise. In 2003, Becker publicly declared his organization's purpose to pass tax and expenditure limitation laws (TEs) immediately after being hired on to MHPC (see attached). So the intention is clear, regardless of MHPC's false and misleading testimony. Note that the staff also produced evidence that showed that other aspects of Mr. Becker's testimony was false. Regardless, the Commission decided to continue to take Mr. Becker and Dan Billings, MHPC's legal representative, at their word.

If the Commission is interested in looking for lessons from these events, the core issue is how the Commission voted to not investigate the matter. It failed to conduct a fact-finding to determine whether or not the intent was present. The mission states that the Commission is to "investigate violations of the campaign finance reporting laws." Here, it voted to not carry out that mission. Perhaps rules should be crafted to prevent such dereliction of duty.

Retroactive Determinations

On other notes, the notion of past expenditures retroactively falling into reportable categories seems to offer practical challenges. This may be worthy of further consideration because of Commission Chair Friedman's position stated during the MHPC case. He stated that the determination of MHPC's status as a Political Action Committee could only be made over two election cycles. The actions the entity took promoting TABOR from 2003-2006 would be those of a PAC if it repeated those activities in the future. Now, MHPC has brought forward the "model" legislation as it did before and looks to be getting set for such a repeat performance. At what point will this trigger an investigation to determine PAC status?

-END-

Sun Journal

Significant changes sought in economic policies

Sunday, February 16, 2003

Maine government has chronically proven that it is unable to apply fiscal discipline to the budget process. Legal limits must be placed on policymakers.

We live in one of the finest places in the nation - our great state of Maine. Our magnificent and immense natural resources, our safe and varied communities, combined with the determination and grit of Maine people, makes the state a place about which books are written and movies are made.

Yet Maine is on the verge of significant population and economic decline. If we do not direct our elected (and non-elected) officials to make significant, structural changes in our long-held policies on taxes, economic development, and regulations that we place on both our people and businesses, Maine will see more closings, more layoffs, and more businesses deciding to locate their operations somewhere outside our borders. That potential end result will have a devastating effect on each of us in a very real way.

Conservatives have long held that there are certain key elements to a thriving and robust economy: lowering the tax burden, encouraging responsible free market competition among the business community and limiting the amount of unfunded and overly burdensome regulations placed upon both individuals and corporations.

As it relates to the states, these beliefs are based upon factual data that show the competitive advantage in those states that have embraced this fundamental understanding. States such as Colorado, Florida, and our neighbor New Hampshire, have seen a significant growth in population, business development and, as a result, tax revenue.

The Maine Heritage Policy Center has emerged as a leading Maine voice for these honorable views of the conservative philosophy - and as such is once again reminding Mainers of their strong, independent and participatory Maine heritage.

MHPC is a new nonprofit, nonpartisan research and educational organization whose mission is to formulate and promote conservative public policies based on the principles of free enterprise; limited, constitutional government; individual freedom; and traditional American values - all for purpose of providing public policy solutions that benefit the people of Maine.

In the critical area of the economy, we all heard the rhetoric during the recent gubernatorial contest regarding Maine's high tax rate, and that the business community is finding it hard to live and work here. While the campaign may be over, that reality still exists.

In a 2002 study published by the Tax Institute, Maine was the last - the lowest, the bottom - of the list in terms of tax-friendly states. Maine's individual tax burden (combining a Maine resident's state, local, property, sales and excise taxes), as a percentage of personal income, was 13.6 percent - the highest in the union!

These are facts that we can no longer ignore. These types of well-publicized reports cannot and do not bode well for Maine's prospect at attracting new businesses to the state. Remember that along with those businesses come dozens or hundreds or thousands of new people to Maine who would buy houses, cars, food and, yes, pay taxes.

Mainers must be adamant in their strong opposition to any tax increases; in fact, we must push for significant, structural reform that decreases the overall tax burden on Maine's people and businesses. Such reform must include property tax caps, such as are already in place and working well in Bath. Additionally, tax and expenditure limitations should be passed, as they have been by a majority of the states. TELs legally limit a state's ability to increase either taxes and/or expenditures. Maine's state government has chronically proven that it is unable to

apply fiscal discipline to the budget process, as each of us must do with our own families or businesses. Therefore, legal limits must be placed on policymakers.

The Maine Heritage Policy Center provides objective, fair and grounded analyses of public policy issues facing the state. The need for an organization of MHPC's nature is based on the principles of balance.

Mainers need to hear all ideas that could influence and shape the course of our state. MHPC provides research and analysis with the utmost integrity, drawing on both local and national experts to offer solutions and to promote effective and responsible public policy models that already occur within Maine.

Our Maine heritage is based on grit, determination and ingenuity. Those characteristics together provide the ideal foundation for promoting positive change that will ensure a more secure future for our state.

Bill Becker of Portland is the Executive Director of The Maine Heritage Policy Center.



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1st Opportunity
to Comment

MEMORANDUM

To: Interested Parties

From: Jonathan Wayne, Executive Director

Date: November 14, 2007

Subject: Opportunity to Comment on Ballot Question Reporting

The Ethics Commission is soliciting comments on proposed guidance on ballot question reporting. Organizations which raise or spend more than \$1,500 to influence ballot questions and which do not qualify as political action committees (PACs) must file reports with the Ethics Commission under 21-A M.R.S.A. § 1056-B. About one year ago, the Commission staff offered advice to § 1056-B filers. Now, the staff is proposing that the Commission update the guidance and make clarifications in certain areas. The new advice is mostly contained in the last 1 ½ pages of the memo. The proposed guidance would only impact PACs if they are benefiting from in-kind contributions of donated staff or expenditures by other organizations to influence ballot questions.

The Commission will consider the proposed guidance at its meeting on Friday, December 7, at 9:00 a.m., and you are invited to comment at the meeting. Written and e-mailed comments are also welcome. (My e-mail address is Jonathan.Wayne@maine.gov.) Your written comments will be most helpful if the Commission receives them no later than Wednesday, November 28, so that the Commission members can read them in advance of the meeting.

If you have any questions, please telephone me at 287-4179. Thank you for your consideration of the proposed amendments.

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Wayne, Jonathan

From: Brenda Peluso [bpeluso@nonprofitmaine.org]
Sent: Tuesday, November 27, 2007 1:22 PM
To: Wayne, Jonathan
Cc: Scott Schnapp
Subject: Re: 11/14/07 Memo

Hello and thanks for the opportunity to comment on proposed "Guidance on Reporting under 21 – A.M.R.S.A. Section 1056-B".

I only have a couple of comments/questions:

1) Under "What expenditures are covered by Section 1056-B?", I believe the 6th bullet is too broad. Research that is undertaken with a broad purpose that eventually is used to influence the outcome of a ballot initiative could be interpreted to count here and I don't think that is your intention. Perhaps adding the phrase "at the time the research is conducted" would help. "...should know, at the time the research is conducted, that the research will be used to promote or oppose a ballot question."

Another approach would be to insert the word "exclusively" – "...research will be used exclusively..." But I think that narrows things a bit too much.

2) Under "What expenditures are not covered...?", do you mean in the second bullet that staff time writing op eds or letters to the editor with the purpose of influencing the outcome of a ballot initiative doesn't count? I would certainly think that staff time would count, but since the distribution is free – that would be tough to quantify its in kind contribution to your efforts.

Thanks again for the opportunity. Take care.

Best regards, Brenda Peluso
Director of Public Policy
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